what they do than with regard to conservatives who decry ''judicial activism.'' It is a constant refrain from conservatives that judges should not be intervening in the policy process to impose their own particular views, and that it is especially egregious when appointed judges make fundamental decisions that ought to be left to elected officials. Their indignation is of course at its highest when decisions by some of those elected officials are in fact overturned by judges in the name of some judicial principle.

As Adam Cohen shows in his very thoughtful essay in the New York Times for July 9th in fact, conservative judges—generally to the great applause of their co-ideologues—are far more energetic judicial activists in this sense than their liberal counterparts. Few examples of conservative indignation at the Supreme Court equal in volume the anger that came when a 5–4 majority of the court decided not to overrule the decision of elected officials in Connecticut regarding eminent domain. Conservatives vigorously objected to the Court's failure to intervene and cancel the decisions of these elected officials. In the most recent Supreme Court term, the Court ended its work for the year by invalidating several important actions taken by elected officials—regarding school integration and campaign finance reform to name two of the most prominent. The Eleventh Amendment jurisdiction of the court under the conservatives' rule—a great expansion of the constitutional prohibition against suits against States—has been used repeatedly to knock out the application of congressional statutes that seek to prevent discrimination against vulnerable groups.

As the internal headline on Mr. Cohen's piece says with regard to judicial activism, ''The conservatives forgot that they're opposed to it.'' It is important, Madam Speaker, for people to be honest about what they believe and not simply to misuse principle as a means of enacting substantive positions without having fully to defend them. I ask in the interests of informed debate on this question of who are the judicial activists that the article by Mr. Cohen be printed here.

[From the New York Times, July 9, 2007]

LAST TERM'S WINNER AT THE SUPREME COURT: JUDICIAL ACTIVISM

(By Adam Cohen)

The Supreme Court told Seattle and Louisville, and hundreds more cities and counties, last month that they have to scrap their integration programs. There is a word for judges who invoke the Constitution to tell democratically elected officials how to do their jobs: activist.

President Bush, who created the court's conservative majority when he appointed Chief Justice John Roberts and Justice Samuel Alito, campaigned against activist judges, and promised to nominate judges who would ''interpret the law, not try to make law.'' Largely because of Chief Justice Roberts and Justice Alito, the court has just completed one of its most activist terms in years.

The individuals and groups that have been railing against judicial activism should be outraged. They are not, though, because their criticism has always been of ''liberal activist judges.'' Now we have conservative ones, who use their judicial power on behalf of employers who mistreat their workers, tobacco companies, and whites who do not want to be made to go to school with blacks.

The most basic charge against activist judges has always been that they substitute their own views for those of the elected branches. The court's conservative majority did just that this term. It blithely overruled Congress, notably by nullifying a key part of the McCain-Feingold campaign finance law, a popular law designed to reduce the role of special-interest money in politics.

It also overturned the policies of federal agencies, which are supposed to be given special deference because of their expertise. In a pay-discrimination case, the majority interpreted the Civil Rights Act of 1964 in a bizarre way that makes it extremely difficult for many victims of discrimination to prevail. The majority did not care that the Equal Employment Opportunity Commission has long interpreted the law in just the opposite way.

The court also eagerly overturned its own precedents. In an antitrust case, it gave corporations more leeway to collude and drive up prices by reversing 96-year-old case law. In its ruling upholding the Partial-Birth Abortion Ban Act, it almost completely reversed its decision from 2000 on a nearly identical law.

The school integration ruling was the most activist of all. The campaign against ''activist judges'' dates back to the civil rights era, when whites argued that federal judges had no right to order the Jim Crow South to desegregate. These critics insisted they were not against integration; they simply opposed judges' telling elected officials what to do.

This term, the court did precisely what those federal judges did: it invoked the 14th Amendment to tell localities how to assign students to schools. The Roberts Court's ruling had an extra fillip of activism. The civil rights era judges were on solid ground in saying that the 14th Amendment, which was adopted after the Civil War to bring former slaves into society, supported integration. Today's conservative majority makes the much less obvious argument that the 14th Amendment protects society from integration.

With few exceptions, the court's activism was in service of a conservative ideology. The justices invoked the due process clause in a novel way to overturn a jury's award of $79.5 million in punitive damages against Philip Morris, which for decades misrepresented the harm of smoking. It is hard to imagine that Chief Justice Roberts and Justice Alito, who were in the majority, would have supported this sort of ''judge-made law'' as readily if the beneficiary were not a corporation.

The conservative activism that is taking hold is troubling in two ways. First, it is likely to make America a much harsher place. Companies like Philip Morris will be more likely to injure consumers if they know the due process clause will save them. Employers will be freer to mistreat workers like Lilly Ledbetter, who was for years paid less than her male colleagues, if they know that any lawsuit she files is likely to be thrown out on a technicality.

We have seen this before. In the early 1900s, the court routinely struck down worker protections, including minimum wage and maximum hours laws, and Congressional laws against child labor. That period, known as the Lochner era—after a 1905 ruling that a New York maximum hours law violated the employer's due process rights—is considered one of the court's darkest.

We are not in a new Lochner era, but traces of one are emerging. This court is already the most pro-business one in years, and one or two more conservative appointments could take it to a new level. Janice Rogers Brown, a federal appeals court judge who is often mentioned as a future Supreme Court nominee, has expressly called for a return to the Lochner era.

The other disturbing aspect of the new conservative judicial activism is its dishonesty. The conservative justices claim to support ''judicial modesty,'' but reviews of the court's rulings over the last few years show that they have actually voted more often to overturn laws passed by Congress—the ultimate act of judicial activism—than has the liberal bloc.

It is time to admit that all judges are activists for their vision of the law. Once that is done, the focus can shift to where it should be: on whose vision is more faithful to the Constitution, and better for the nation.

IN HONOR OF SGT KEITH KLINE

HON. MARCY KAPTUR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 12, 2007

Ms. KAPTUR. Madam Speaker, I rise today to commemorate SGT Keith Allen Kline, born and raised in Oak Harbor, Ohio, and whose life was tragically cut short when he died in service in Iraq. He was mortally wounded while on patrol in Baghdad on July 5, 2007. Over the weekend his community will honor his memory and comfort his family, and Sergeant Kline will be laid to rest in Oak Harbor's Union Cemetery on Monday, July 16, 2007.

In his poem the ''Psalm of Life'', Henry Wadsworth Longfellow writes:

WHAT THE HEART OF THE YOUNG MAN SAID TO THE PSALMIST

. . . Life is real! Life is earnest!
And the grave is not its goal;
Dust thou art, to dust returnest,
Was not spoken of the soul.

. . . In the world's broad field of battle,
In the bivouac of Life,
Be not like dumb, driven cattle!
Be a hero in the strife!

. . . Lives of great men all remind us
We can make our lives sublime,
And, departing, leave behind us
Footprints on the sands of time;—

Footprints, that perhaps another,
Sailing o'er life's solemn main,
A forlorn and shipwrecked brother,
Seeing, shall take heart again.

Let us, then, be up and doing,
With a heart for any fate;
Still achieving, still pursuing,
Learn to labor and to wait.

Sergeant Kline lived the spirit of this message and the poem's words serve as an epitaph as we recall his life and honor his ultimate sacrifice.

Keith Kline graduated from Oak Harbor High School in 2002. A talented wrestler, he also played soccer and football and participated in school plays. He enlisted in the United States Army following his graduation. At Fort Gordon, Georgia, he completed his Advanced Individual Training and was assigned to Bravo Company, 96th Civil Air Battalion, 95th Civil Affairs Brigade. In Iraq 3 months, he was assigned to the Civil Affairs Team supporting the 4th Brigade Combat Team, 1st Infantry Division. In his brief career his distinguished service brought him four Army Achievement Medals, Joint Meritorious Unit Award, Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Expeditionary Medal and Service Medal, Army Service Ribbon, and Basic Parachutist Badge. His death